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OGC HAS REVIEWED.

GENERAL COUNSEL'S OPINION NUMBER 59-1, DATED 7 JANUARY 1959

The discretionary authority of the responsible Field Official to take over personally secured quarters overseas is prospective in application.

TO DIRECTOR OF COMMUNICATIONS

1. We have your memorandum of 1 December 1958, transmitting a claim for [] for reimbursement of housing expenses incurred by him during a three-year tour []. The facts indicate that [] resided in personally obtained quarters [] and received a quarters allowance in accordance with the Standardized Regulations (Government Civilians, Foreign Areas). The amount received by him was less than the amount actually spent by him on the quarters. He seeks reimbursement for his excess housing expenses on the grounds that he would have been paid this amount had appropriate officials properly administered the provisions of [].

2. The pertinent provision of [] is paragraph 7, "Applicability and Implementation." Under that heading, subparagraph 7a(2) provides in part:

"Where the personally-secured quarters of the individual are [] in the opinion of the Responsible Field Official [] both reasonable and adequate, the terms of the lease are satisfactory, and the rental costs are comparable to prevailing rental costs, the Responsible Field Official may take over such quarters as Organization quarters in accordance with the procedures set forth in paragraph 5."

Paragraph 5b(1) states:

"Where it is necessary, in the judgment of the Responsible Field Official, to exceed the maximum quarters allowance authorized to the individual as established in the Standardized Regulations (Government Civilian, Foreign Areas) in order to obtain housing of the standard set forth in 3a(1), he shall execute a written statement establishing the reasonableness of the quarters provided and the cost thereof as related to the grade of the employee and the local housing situation. This statement shall be retained in station files with a copy of the lease for review and inspection."

3. The failure of the Chief of Station to make the necessary determinations under [] is fatal. We do not believe the spirit of the provisions quoted above, much less the letter, could be compiled with post factum. As we have held in the past, in situations involving payments under

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5X1A [] the quarters must be considered "adequate" by the Chief of Station while the individual continues to occupy them. This is implicit in the fact that the effect of the Chief of Station's determination of adequacy is to make the quarters "Organization quarters." It would seem anomalous that this could be done at a time when conceivably the quarters were no longer occupied by Agency personnel. In short, it is our opinion that paragraph 7a(2) of [] is prospective in application. Therefore that regulation may not now be used as authority for payment of this claim.

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LAWRENCE R. HOUSTON
General Counsel

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